

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

3                   IN RE: VALSARTAN PRODUCTS  
4 LIABILITY LITIGATION

**CIVIL ACTION NUMBER:**

1 : 19-md-02875-RBK-JS

**STATUS CONFERENCE  
(Via telephone)**

**Wednesday, October 28, 2020**  
**Commencing at 10:00 a.m.**

B E F O R E: THE HONORABLE JOEL SCHNEIDER,  
UNITED STATES MAGISTRATE JUDGE  
(Page 57) THE HONORABLE ROBERT B. KUGLER,  
UNITED STATES DISTRICT JUDGE

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**1** (ALL PARTIES VIA TELEPHONE, October 28, 2020,  
**2** 10:02 a.m.)

**3** JUDGE SCHNEIDER: Good morning, Counsel. This is  
**4** Judge Schneider. I hope everyone is well.

**5** Sarah, are you there?

**6** THE DEPUTY CLERK: I'm here, Judge.

**7** JUDGE SCHNEIDER: Do we have a court reporter?

**8** THE DEPUTY CLERK: Yes, Karen's on the line.

**9** JUDGE SCHNEIDER: Hi, Karen.

**10** THE COURT REPORTER: Hi, Judge.

**11** JUDGE SCHNEIDER: Let's go on the record, Karen.

12 Again, this is Judge Schneider. We're on the record  
13 in the Valsartan MDL-2875.

**14** Can we have the names of lead counsel on the phone  
**15** starting with plaintiffs.

16 MR. SLATER: Good morning, Your Honor, Adam Slater on  
17 behalf of plaintiffs.

**18** JUDGE SCHNEIDER: Anyone else on plaintiffs' team  
**19** want to enter their appearance? If not, that's fine with the  
**20** Court, but usually a number of people enter their appearances,  
**21** but if not, that's okay.

**22** MR. SLATER: I hate to be all alone here.

**23** MR. STANOCH: David Stanoch, liaison counsel for  
**24** plaintiffs, not to leave Mr. Slater, Judge.

**25** MR. RIVERO: And Judge, I'll join, Andrés Rivero,

1 counsel for MSP.

2 MS. WHITELEY: Good morning, Your Honor, this is  
3 Conlee Whiteley on behalf of plaintiffs.

4 JUDGE SCHNEIDER: Good morning, Ms. Whiteley.

5 All right. Why don't we go for the defense then.

6 MR. GOLDBERG: Thank you, Judge. This is Seth  
7 Goldberg on behalf of the ZHP parties and the defendants.

8 MS. LOCKARD: Good morning, this is Victoria Lockard  
9 from Greenberg Traurig on behalf of the Teva entities and the  
10 defendant.

11 MR. TRISCHLER: Good morning, Your Honor, Clem  
12 Trischler for Mylan Pharmaceuticals and the defense group.

13 MR. GEOPPINGER: Good morning, Your Honor, Jeffrey  
14 Geoppinger for AmerisourceBergen and the wholesaler  
15 defendants.

16 MS. JOHNSTON: Good morning, Your Honor, this is the  
17 Sarah Johnston for the retailer pharmacy defendants as well as  
18 CVS and Rite Aid.

19 JUDGE SCHNEIDER: Okay. Good morning, everyone.

20 I received your letters. Thank you very much. They  
21 were comprehensive. I'm prepared to talk about all of the  
22 issues you want to talk about.

23 Before we get into the agenda, I'd just like to get  
24 my arms around just generally where things are and some  
25 general questions.

1                   Judge Kugler, I spoke with him, we have prepared for  
2 this conference, he's read your submissions, and unless you  
3 have any objections, immediately after this part of the call,  
4 he'll join us to deal with his issues and anything you want to  
5 address with Judge Kugler.

6                   So we're at the end of October. I know under the  
7 current schedule, the defendants are supposed to be complete  
8 with their document and ESI production by the end of November.

9                   Are we generally on track with that, counsel? And  
10 how are things going on that front?

11                  MR. GOLDBERG: Your Honor, this is Seth Goldberg for  
12 defendants. I believe we are. I believe all of the  
13 defendants are working through their productions and are  
14 producing documents on a rolling basis to plaintiffs, and I  
15 don't know if there are any particular issues right now, so it  
16 seems like we're headed in the right direction.

17                  JUDGE SCHNEIDER: Terrific, that's really good news.

18                  On another general note, you know, we'll talk about  
19 the deposition protocols today, and I wholeheartedly agree  
20 with what I said several times before, the logistical issues  
21 regarding to these depositions are just incredibly  
22 complicated. I can't imagine, I know I've never been involved  
23 in a case where it's been as complicated as this case, but  
24 with the sophistication of the counsel in this case and the  
25 Courts help, I'm sure we'll get through it.

1           But we'll get into -- like I said, we'll get into the  
2 deposition protocol issues, but in terms of scheduling, have  
3 the parties started discussions about when and where the  
4 depositions are going to take place?

5           Let's start with the plaintiffs, because I think  
6 that's a little bit more straightforward. Have there been  
7 discussions about when the class plaintiffs' deps are going to  
8 start and where they are scheduled?

9           MR. SLATER: Your Honor, it's Adam Slater. We  
10 provided in the last few days, dates and periods of time when  
11 I think most of the class plaintiffs are available to be  
12 deposed. We'll get more dates. They haven't been requested  
13 by the defense, but we just unilaterally started providing  
14 them, because we have, you know, a concern that the Court's  
15 aware of that the defense doesn't want to proceed in the  
16 timeframe that Your Honor has expressed, so we've just started  
17 unilaterally providing dates in November, December, and  
18 hopefully, the defense will start to accept those dates and  
19 schedule the depositions.

20           We assume that the plaintiff depositions will be done  
21 via Zoom. I don't think -- or a similar technology. We don't  
22 really think there's a reasonable alternative at this point.

23           JUDGE SCHNEIDER: Mr. Goldberg, any discussion  
24 amongst your group about when these depositions are going to  
25 start, how you're going to coordinate them, who's going to

1 take them, et cetera?

2 MR. GOLDBERG: Yes, Your Honor, and we received  
3 plaintiffs' letter, I think it was Monday evening, providing  
4 us with a list of class representatives and dates in November  
5 and December. We're going to look at that.

6 You know, the Court has set the period for those  
7 depositions to be conducted through, I believe it's mid-March,  
8 and as the Court noted during the last conference, the  
9 defendants will determine when we're going to start those  
10 depositions, probably appreciate getting those dates. I think  
11 we are looking toward probably after the new year to begin  
12 those depositions, but we are going to coordinate and we'll  
13 let plaintiffs know, hopefully this week, whether we're going  
14 to propose some dates or whether we're going to ask them to  
15 get additional dates.

16 I think it would make sense for plaintiffs and be  
17 reasonable for them to start asking their class representative  
18 clients to look through dates in the first three months of  
19 2021.

20 JUDGE SCHNEIDER: Okay. Well, that's fine,  
21 Mr. Goldberg. And I agree, when you start those -- not you,  
22 when the defendants start those depositions, it's completely  
23 up to them. It's your call.

24 I know the Court order provides currently that the  
25 deps are going to start no later than January 15th. I'm just

1 going to make a minor change to that, to make it January 18th,  
2 which is the Monday rather than the Friday. If the 18th is a  
3 holiday, we'll make it the 19th. I don't think that  
4 materially affects anything.

5 But, again, it's totally within the defendants'  
6 control when they start, as long as they finish up by the  
7 date.

8 Do the parties intend to communicate about who's  
9 going to take what plaintiffs' deposition? I think that makes  
10 a lot of sense. I'm not -- I read the protocol. I'm not sure  
11 there was a provision in there about identifying who's going  
12 to take the deposition, so that, you know, communications  
13 don't have to flow -- every communication doesn't have to flow  
14 through liaison counsel to avoid a bottleneck.

15 Is that something you're going to do, to advise each  
16 other of who's going to take each deposition, who's going to  
17 be the lead questioner anyway?

18 MR. SLATER: Your Honor, it's Adam Slater. I don't  
19 think we addressed it, but it's a great point and I think that  
20 we probably should add a provision that the lawyer who's going  
21 to be leading -- defending the deposition should be identified  
22 and the questioner, that way -- you're right. So that there  
23 could be direct contact and not have to involve 20 lawyers. I  
24 think it's a great idea, we should definitely include it.

25 JUDGE SCHNEIDER: Yeah, I do too. I think it should

1 be included. I think, I think, I'm not a hundred percent  
2 sure, I may have seen something in the protocol about  
3 communications go through liaison counsel and frankly, I think  
4 that's a recipe for disaster.

5 Mr. Slater, Mr. Goldberg, you've got your hands full  
6 with so many issues. The nitty-gritty of a deposition  
7 probably is not something you need to get involved in, but the  
8 lead defense attorney and the lead questioner should be able  
9 to work those issues out.

10 MR. SLATER: I agree.

11 JUDGE SCHNEIDER: I agree, it should be in the  
12 protocol.

13 Maybe another thing that should be in the protocol  
14 is, if you can agree on a court reporter or multiple court  
15 reporters so you know who's going to do these things and that  
16 person or company or persons can get down the procedure that  
17 you all want to follow to make things go smoother for you.  
18 Again, I'll leave that up to you.

19 MR. SLATER: Your Honor, it's Adam Slater. Just to  
20 notify you, we've spoken with Golkow who handled all the  
21 depositions in the Benicar litigation, and we've told the  
22 defense that, and I don't know that they've confirmed, but  
23 hopefully, there won't be any objections to that and we  
24 absolutely can do that. I think there's no way to do this  
25 seamlessly, other than to have one company handling

1 everything, because obviously, there's scheduling and  
2 technical issues, et cetera, so it makes a lot of sense to use  
3 one company.

4 JUDGE SCHNEIDER: Okay, great. I'm not ordering it,  
5 but I think it makes sense to use one or two companies. If  
6 the plaintiffs want to use one, the defense wants to use one,  
7 you know, that's fine, but probably it makes sense to use, you  
8 know, a maximum of one or two companies.

9 So it sounds like the plaintiffs' deps, you know,  
10 that's the low-hanging fruit in this case. You'll be handling  
11 that and that looks like it's going to be fine.

12 I know one of the issues that you want to discuss  
13 with Judge Kugler is the additional BI depositions you want to  
14 take, Mr. Goldberg, and that's fine. I had a brief  
15 conversation with Judge Kugler about that yesterday. If you  
16 want to raise that today, that's fine.

17 I think he was anticipating addressing that at the  
18 end of the November meeting, but if you want to raise it  
19 today, that's fine, no problem. But it's not something that's  
20 going ignored. We're aware of that request of the defendants.

21 The more problematic issue, obviously, is the  
22 depositions of the defendants. We have the complications of  
23 the foreign depositions, the Chinese, the Indian depositions.  
24 Those are one category and then, of course, there's the  
25 category of witnesses who hopefully are in the United States

1 that are going to be deposed.

2                   Have there been discussions amongst the parties about  
3 who's going to be deposed when, et cetera, et cetera?

4                   MR. SLATER: Hello, Your Honor, Adam Slater again.

5 Those discussions have begun. If they're not done and they're  
6 certainly going to need to advance further, we, as the  
7 plaintiffs, have expressed to the defense that what we want to  
8 do, and, Your Honor, we started to discuss those prioritized  
9 people for depositions at least as a starting point plus  
10 trying to get identification of who would be the designated  
11 corporate representatives, and, you know, it's our hope, as  
12 we've expressed to defense liaison, that we can work together  
13 to try to be practical in terms of, for example, who gets  
14 designated as a corporate representative, so that it can be  
15 more easily done, hopefully, in the United States, or much  
16 closer in time zones, so that it can be done more seamlessly  
17 and with a lot less inefficiency, so that we could try to --  
18 as we discussed previously, try to maybe reduce the number of  
19 fact depositions we ultimately have to take as best as we can.

20                  I think it's a conversation that has to continue, but  
21 from our perspective, we think that the selection of corporate  
22 representatives and the timing of the depositions have to take  
23 into account where somebody is located, what language they  
24 speak and, you know, I think that if we work together on that,  
25 we can significantly reduce the logistical issues and make it

1 much more easy to get these depositions accomplished.

2 JUDGE SCHNEIDER: Yes, that certainly makes a lot of  
3 sense, but I would hope one of the reasons we started this  
4 more intensive effort about this issue is a recognition of how  
5 difficult it is going to be.

6 So if the depositions of the defendants are going to  
7 start in mid-January, the parties really have to roll up their  
8 sleeves and start talking about who's going to be deposed  
9 where and when.

10 Which reminds me, if it's not already in the  
11 deposition protocol, I think it should be, and if it's not,  
12 we'll order it.

13 But defendants should be required to identify who the  
14 designated 30(b) (6) witnesses are going to be, who are going  
15 to appear for their testimony.

16 I know in the run-of-the-mill cases, the plaintiff  
17 usually finds out when the deposition starts, but this  
18 certainly isn't the run-of-the-mill case. So there should be  
19 an agreement amongst the parties, X days or weeks, whatever,  
20 before the deposition is taken, the defendant should be  
21 required to identify who the designated witness or witnesses  
22 are, and that makes a lot of sense, because I know, and we'll  
23 discuss it in a few minutes, there's this issue about  
24 individual and corporate depositions, and you don't want to  
25 depose the same person twice, makes a lot of sense, but in

1 order to accomplish that goal, the designee witness has to be  
2 identified.

3 So, I think that's something important that should be  
4 in the protocol, if it's not already in there.

5 Also, Mr. Slater, I think it's important to make sure  
6 that the plaintiffs designate -- I don't know if you have a  
7 person or a group of persons who is going to be responsible  
8 for each defendant so that that defendant knows who to contact  
9 about any questions and logistical issues.

10 I don't know, say, if you're going to have just one  
11 person who's going to do all the ZHP depositions, or do you  
12 have a team of people who are going to do the ZHP depositions.  
13 But there should be a point person for the plaintiffs that Mr.  
14 Goldberg or Mr. Trischler or, you know, Ms. Lockard knows for  
15 their client, who they can talk to about issues, again, rather  
16 than funneling everything through you.

17 MR. SLATER: We'll do that, Your Honor. I think to  
18 some extent, we're still waiting for some guidance as to  
19 whether there's going to be any prioritization of any of the  
20 particular defendants, you know, based on some sort of, you  
21 know, trial plan as we discussed months and months ago.

22 But in either case, we'll certainly have a point  
23 person for scheduling and logistical issues for the sets of  
24 depositions for each manufacturer, of course.

25 JUDGE SCHNEIDER: I know that when we had that call a

1 week or two or three ago with Judge Kugler, he had indicated  
2 that he's going to address that with the parties at the end of  
3 -- at the end of November call. I think that call is  
4 scheduled for November 22nd or thereabouts, so the timing  
5 should work out good to get further indication from Judge  
6 Kugler about how the case is going to proceed, priorities.  
7 Plaintiff can set them and then more intensive discussions can  
8 take place about who's going to be deposed, where, et cetera.

9               Okay. Those were the general questions I had. We  
10 can get into the more specific issues. Let me say at the  
11 outset, that I read, obviously, I read what the parties  
12 submitted. It looks like at least with regard to one specific  
13 category of issues, the Rule 34 document requests to the  
14 third-party payors, it looks like the parties are meeting and  
15 discussing on this issue.

16               If the parties don't object, I certainly have no  
17 problems if they continue their discussions and whatever  
18 issues remain, we can address them at the November 11th call.  
19 But it seems like the parties are making progress, and I don't  
20 want to stand in the way of that.

21               To the extent there's any objection that the document  
22 requests are late, that objection is overruled. The Court has  
23 already said that the Rule 34 document requests may be served.  
24 The substance of what's appropriate or not appropriate remains  
25 to be decided or agreed upon, but we're not going to foreclose

1 the defendants from making those document requests, nor are we  
2 going to foreclose the defendants from raising their  
3 contention that documents that were responsive to the fact  
4 sheets weren't produced.

5 So that may give the parties some guidance on some  
6 issues, but if the parties are agreeable, I certainly am not  
7 going to stand in the way of additional discussions to  
8 hopefully work out all the issues, and again, whatever  
9 remains, we can discuss on November 11th.

10 What do you all think?

11 MR. GOLDBERG: Your Honor, this is Seth Goldberg for  
12 the defendants, and that is what we proposed to plaintiffs on  
13 Saturday. I just want to clarify, the letter that the Court  
14 received yesterday, we had proposed continuing to meet and  
15 confer with plaintiffs on Saturday. We asked them if that was  
16 acceptable. They did not respond to us until yesterday  
17 afternoon, about 15 minutes before they filed their letter  
18 yesterday evening.

19 Consequently, we were -- we had to brief the issue  
20 fully for submission on Monday. It seems that the parties are  
21 in agreement to meet and confer and hopefully, we'll be able  
22 to resolve the issues by November 11th.

23 JUDGE SCHNEIDER: Okay. Great. That's fine. I  
24 raised that issue first because it was easy to get out of the  
25 way.

1           I have your letter in front of me, Mr. Goldberg. Do  
2 you want to go through these sort of big picture issues on the  
3 deposition protocol to see if we can get them resolved so we  
4 can finalize the protocol?

5           MR. GOLDBERG: Sure.

6           Excuse the background noise, of course this is the  
7 day that the lawns in the neighborhood are getting mowed.  
8 Hopefully, that will stop soon. My neighbor has a much bigger  
9 yard than I do.

10           (Laughter.)

11           JUDGE SCHNEIDER: Well, let me just say, let me just  
12 say, I may have said this before, Mr. Goldberg, I almost never  
13 get on a call these days where there's not a crying baby, a  
14 landscaper or a contractor in the background, so don't worry  
15 about it.

16           MR. SLATER: Your Honor, it's Adam Slater. Before we  
17 get into this, I just want to make the Court aware and  
18 possibly remind Mr. Goldberg, we have not completed our  
19 meet-and-confer process on the deposition protocol. I just  
20 want to make it clear for the Court because we just literally  
21 in our letter brought the Court up to date on the fact that  
22 the discussions were ongoing.

23           So we were surprised to see statements that certain  
24 things had been finalized, or that the macro issues were ready  
25 to be teed up for the Court. I mean, if you want to have a

1 discussion of it, we will, but we never completed the process,  
2 we thought we were still talking. So this was a surprise to  
3 us that their letter, the defense letter was framed as if  
4 everything -- certain things were agreed to and other things  
5 were ready to be argued. We thought the process was still  
6 going.

7 MR. GOLDBERG: Your Honor, this is Seth Goldberg.  
8 You know, that seems to be inconsistent with the fact that I  
9 sent Mr. Slater the protocol with the macro issues and  
10 identified those that we would be raising with the Court and  
11 have not heard back and so was under the impression that we  
12 were in agreement.

13 You know, if plaintiffs want to continue to talk  
14 about the protocol, any particular issues they want to  
15 discuss, we can do that, certainly, not, you know, no need to  
16 finalize the protocol today.

17 These few issues we might, you know, we might want to  
18 address now, since they've been raised with plaintiffs a  
19 number of times. We've discussed them a number of times.  
20 These issues seem to be ripe, but happy to, you know, put it  
21 off and we can discuss it in two weeks. It's up to Your  
22 Honor.

23 JUDGE SCHNEIDER: Well, we can deal with these three  
24 issues or four issues now, but if there's going to be  
25 additional issues, I would prefer that you meet and confer and

1 we can address them on November 11 or thereabouts.

2 I'm not surprised that Mr. Slater had said that there  
3 were a couple of provisions in at least one of the addendums I  
4 saw that -- I would be surprised if plaintiff in the first  
5 instance agreed to it, so I expected that that was going to  
6 happen, but why don't we deal with these issues now and any  
7 additional issues, we'll deal with on November 11, and then --  
8 it's a little bit later than I hoped, but it would still be  
9 great if we could get a final protocol with addendums entered  
10 before the end of November.

11 So why don't we forge ahead on these issues and we  
12 understand that there may be additional disputes, and if there  
13 are, parties will talk about it and we'll raise it and address  
14 it at the next call on November 11.

15 Mr. Goldberg, do you want to start with the issues  
16 you've raised?

17 MR. GOLDBERG: Sure. There are three issues that we  
18 put in, and this is just with respect to the deposition  
19 protocol, not the addendums, although, it may bear on the  
20 addendums, but the first issue is that defendants have raised  
21 the point that those witnesses that are being deposed pursuant  
22 to the Master Complaint may end up being noticed for  
23 depositions should there be an Irbesartan or -- and/or  
24 Losartan Master Complaint and they may be noticed for  
25 depositions pursuant to those Master Complaints, and what we

1 suggested to plaintiffs is that we add language to the  
2 protocol that the parties would agree now that on -- should  
3 witnesses in the Valsartan action be noticed for depositions  
4 in the irbesartan and/or losartan actions, that the parties  
5 would simply work together for those later depositions to try  
6 to narrow them to avoid retreading ground covered in the  
7 Valsartan matter, to the extent there is any, so that those  
8 depositions are more streamlined and efficient.

9           And we've proposed language in our letter that went  
10 out to add to the protocol to cover that issue, as you can see  
11 on Page 2 of our -- at the top of Page 2 of our letter.

12           JUDGE SCHNEIDER: Isn't that hard to -- in concept,  
13 isn't that hard to dispute, Mr. Slater?

14           MR. SLATER: In concept, it's hard to dispute, but  
15 then when we started to ask questions of Mr. Goldberg during  
16 the meet and confer, which I'm going to again say -- we should  
17 talk through these now, I think it's a good idea, but I want  
18 the Court to be fully aware that we had left it that we were  
19 still discussing these issues, so we wouldn't brief the issues  
20 if we knew it was being presented.

21           So in the meet and confer, we said, great concept,  
22 now let me ask you a question. So if a witness, for example,  
23 was deposed about the contamination of the Valsartan, are you  
24 going to agree that that testimony is going to apply to  
25 losartan and irbesartan. And the answer was, well, we'll have

1 to see what the testimony was.

2 So do we have to ask the question in a generalized  
3 sense during the Valsartan deposition in terms of the drug, or  
4 do we have to ask it in the context of Valsartan, or do we  
5 have to also include irbesartan and losartan despite the fact  
6 that we haven't initiated specific discovery on those drugs  
7 and don't know if there are separate issues, so we're not  
8 educated on that before the depositions? And the answers  
9 were, you know, basically, we'll see or we'll figure it out.

10 So we have no problem with the concept. The problem  
11 is, that the concept predisposes that the details will be  
12 easily agreed to. We have no interest in asking a witness the  
13 same question over and over again, if the testimony is  
14 adequate and covers the issue the first time.

15 But I just gave you a couple of examples that are  
16 really basic, and the answer from the defense was, we don't  
17 know. I asked, was the losartan manufactured the same way,  
18 does it have the same contamination causes across all the  
19 defendants.

20 The answer was, we don't know, we haven't looked into  
21 that yet, or we don't -- we can't tell you that.

22 So we were being asked to agree to something where  
23 the defense was telling us, we don't know whether this is even  
24 feasible on the fundamental issues. So that -- the devil is  
25 in the details on this. There's no objection to the concept

1 that if somebody's been deposed on a common issue, and it's  
2 overlapping to the losartan or irbesartan cases later, that it  
3 doesn't need to be repeated, you know, we have clean  
4 testimony, we're not going to be looking to do it again  
5 anyway.

6 So again, the details, you know, beg for a little  
7 more -- I just don't think it's an issue that needs to be  
8 addressed in the protocol at this point, because the protocol  
9 already addresses, in general, duplication, and again, there  
10 is no agreement on how the details will interact between these  
11 different drugs.

12 JUDGE SCHNEIDER: But, for example, the thought that  
13 occurs to me is, let's say the same witness is produced for  
14 losartan or irbesartan, however you pronounce it, we certainly  
15 don't have to spend the first hour or two at the deposition  
16 going over the gentleman's work history or employment history  
17 and educational background, right?

18 MR. SLATER: I think we agree to that, I don't think  
19 we'd have to repeat those questions. That's the low-hanging  
20 fruit, to steal Your Honor's phrase. I'm talking the  
21 nitty-gritty stuff that's the actual substantive testimony.

22 JUDGE SCHNEIDER: All right.

23 MR. SLATER: But I will ask -- I'm sorry, go ahead,  
24 Judge.

25 JUDGE SCHNEIDER: No, you go ahead.

1                   MR. SLATER: I was just going to say, so does that  
2 presuppose that in the Valsartan deposition, we need to take  
3 stuff away and ask about their involvement with losartan and  
4 irbesartan -- I do not believe it would be appropriate.

5                   (Court reporter asks counsel to repeat.)

6                   MR. SLATER: What I said is that we don't believe it  
7 would be appropriate for us to have to address losartan and  
8 irbesartan during the Valsartan depositions, because,  
9 obviously, that's something we have no specific discovery on  
10 and that would take away time to develop the Valsartan case.

11                  JUDGE SCHNEIDER: I think the best thing is, and I  
12 was just going to say, Mr. Goldberg, I think the best thing to  
13 do is to defer this issue, let the parties talk about it, and  
14 see if you can reach a consensus. I do seem to recall, Mr.  
15 Slater is correct, that there is a provision already in the  
16 protocol about duplicative testimony.

17                  You can be assured that we're not going to permit a  
18 witness to be harassed. I don't think the plaintiffs would do  
19 that anyway, nor do I think the plaintiffs have an interest in  
20 duplicating grounds that have already gone over, but it's hard  
21 to -- it's hard to disagree with the general notion that there  
22 are going to be specific questions regarding losartan, for  
23 example, that are not applicable to Valsartan.

24                  So I would suggest we just defer this issue for the  
25 moment and let the parties discuss it further and maybe, maybe

1 not, we'll have to address it in the future. Okay?

2 Why don't we go on to the second issue, Mr. Goldberg.

3 Now, this is an important issue. Who may attend depositions.

4 Certainly, I don't think there's objection if people listen in  
5 on depositions. I don't think that's what you're concerned  
6 about. The parties are concerned about who's going to have a  
7 right to question at depositions, is that right, Mr. Goldberg?

8 MR. GOLDBERG: Yes, Your Honor, there are a few  
9 issues. One, we agreed, we don't think there's any reason the  
10 defendant in this MDL should not be able to attend a  
11 deposition, if it's by video, then it's, you know, either the  
12 video or listening in to the deposition. If it's in person,  
13 that right still exists. You know --

14 JUDGE SCHNEIDER: And let me just ask, is there any  
15 dispute about that? Put questioning aside, but, plaintiffs,  
16 is there any serious dispute that any defendant who wants to  
17 listen in on a dep can listen in?

18 MR. SLATER: Nope. No, Your Honor. It's Adam  
19 Slater. No dispute.

20 JUDGE SCHNEIDER: Let's get to the harder question.

21 MR. GOLDBERG: So in terms of the questioning, there  
22 are -- there are a couple of provisions in the protocol that  
23 matter here. So in terms of an action where a defendant is a  
24 -- a particular action in which a defendant is named, a party  
25 is named as a defendant in that action, so, say, a personal

1       injury case, where you have three different manufacturers, the  
2       wholesaler and two different retailers, you know, it's our  
3       view that each of those defendants has a right to question the  
4       witness with facts -- about facts specific to that defendant.

5           I mean, this is what happens in PI cases all the  
6       time. In particular, questions like product identification  
7       are, you know, particularly pertinent to a specific defendant,  
8       and our approach would be to allocate, among the different  
9       defendants the questioning, so that you'd have one lead  
10      attorney who would ask the vast majority of questions of the  
11      witness.

12           But to the extent there are some particular questions  
13       that a specific defendant, who's been named in the case would  
14       like to ask, that the defendants would allocate their time  
15       accordingly to allow for that question, and, of course,  
16       reserving the right, if necessary, to ask for additional time.

17           But going in, our approach would be to allocate the  
18       time to fit within the seven hours.

19           So that's the issue of defendants named in a specific  
20       action.

21           There is another issue which, you know, which relates  
22       to a specific provision in the protocol that I'm going to try  
23       to direct Your Honor to, but effectively, what it does, it  
24       puts all of the defendants in the MDL on notice that any  
25       witness's testimony can be used against that defendant, even

1 if the defendant is not named in a specific action.

2 So in a way, every defendant has, you know, has an  
3 interest in appearing at the deposition in light of that  
4 provision, and there is a possibility, I suppose, that a  
5 witness could provide some testimony that a, you know, an  
6 individual defendant might feel the need to ask a question to  
7 the witness, and in light of that provision, I don't see how  
8 the defendant can be precluded from asking the witness a  
9 question, and I'm just trying to find the provision.

10 If you're looking at Exhibit A to our letter on  
11 Page 16, it might appear to Your Honor in the marginalia and  
12 deleted language of what it says is, the testimony can be used  
13 in this litigation against anybody who was served with notice  
14 of the deposition or otherwise had reasonable notice thereof.

15 So, of course, every defendant in this MDL has notice  
16 of a deposition. So our --

17 JUDGE SCHNEIDER: I think I -- okay. I'm sorry, go  
18 ahead.

19 MR. GOLDBERG: Our thinking is that with respect to  
20 the, you know, cases where individual defendants are named, we  
21 would allocate the time between the defendants to try to fit  
22 it within seven hours, with a lead attorney asking the vast  
23 majority of the questions, and, of course, there is this --  
24 and so that's one issue that we -- and we've proposed language  
25 for that.

1           But, you know, there is this background issue that  
2 could result in some -- some defendant that is attending the  
3 deposition also needing to ask a question, and we wanted to  
4 make sure the Court was aware of that, and that really goes to  
5 why there is a right to attend a deposition.

6           JUDGE SCHNEIDER: Well, that issue is resolved.

7           Everybody can attend the depositions. The real question is  
8 whether they can question.

9           So on the issue of whether a deposition can be used  
10 against any defendant in the MDL, these cases are consolidated  
11 for discovery and case management, so don't the Federal Rules  
12 of Procedure, you know, provide that if a deposition is taken  
13 in the case, it can be used against any party, right? You  
14 can't prevent that, can you? You can't usurp the Federal  
15 Rules of Civil Procedure.

16           MR. GOLDBERG: Right. The Federal Rules of Procedure  
17 and evidence will control, and so it's just important that,  
18 you know, a party who's attending -- that the parties have the  
19 right to attend the deposition in light of those rules, and if  
20 necessary, be able to confront the witness in light of those  
21 rules.

22           JUDGE SCHNEIDER: Well, again, we're talking  
23 conceptually, but certainly, if they take the plaintiff,  
24 whoever is named in that plaintiffs' Complaint, those  
25 defendants who are on notice, that, you know, there may be

1 testimony at the deposition about product ID and use of their  
2 products. So more than likely, they're going to attend that  
3 deposition.

4 And if there's questions regarding their specific  
5 circumstances, there's probably no dispute that they have a  
6 right to follow-up questioning about product ID issues and  
7 issues specific to themselves.

8 I'm not picking on anybody. Let's say CVS. If the  
9 plaintiff testified that CVS was their pharmacy, CVS was named  
10 in that Complaint, no one can seriously dispute that that  
11 attorney has a right to question the witness about CVS-related  
12 issues.

13 That seems to be indisputable.

14 MR. SLATER: I have no dispute on that, Judge.

15 JUDGE SCHNEIDER: Right. The harder question would  
16 be, what happens if you get to a deposition and the plaintiff  
17 says, oh, yeah, I remember that, I also went to Walgreens, and  
18 if Walgreens happens to be at that deposition, fine, they ask  
19 their questions. But Walgreens may choose not to be there  
20 because they weren't named in the Complaint, and then they  
21 subsequently find out they were named. The harder question  
22 then becomes what rights does Walgreens have to then question  
23 the witness that they weren't on notice of that they were  
24 going to be named.

25 It seems to me that has to be worked out because

1 Walgreens has to be protected, right?

2 MR. GOLDBERG: Correct, Your Honor. Under those  
3 circumstances, we would probably ask that the witness be  
4 called back for another deposition.

5 JUDGE SCHNEIDER: About those specific limited  
6 issues, right?

7 MR. GOLDBERG: Right. Correct.

8 JUDGE SCHNEIDER: And just another thought,  
9 Mr. Goldberg, we've all been at depositions and we know how  
10 those go, but I hope it's not envisioned that when you go  
11 around the table, that each of the, you know, product ID  
12 companies, the companies that are so worried about product ID  
13 issues, that they follow up on the general subject areas, you  
14 know --

15 MR. GOLDBERG: Correct.

16 JUDGE SCHNEIDER: -- product, QI. I hope that's not  
17 envisioned, but absolutely a hundred percent they have a right  
18 to follow up on product ID issues specific to their client.

19 MR. GOLDBERG: You're right, Your Honor, and that's  
20 -- we do not envision having that kind of duplication and  
21 that's why we proposed the language that we have proposed.

22 JUDGE SCHNEIDER: So would it be appropriate to  
23 include a provision that, you know, someone has a right to  
24 make an application for good cause shown, to redepose a  
25 witness about a subject area, and I would think that if a

1 defendant is not named in the Complaint, they're not on notice  
2 that they're going to be named at a deposition, but they are  
3 named at a deposition. It just seems to me that's good cause  
4 to question -- to redepose the witness about that limited  
5 area, which would mean that not every defendant has to attend  
6 every deposition in order to protect their interests.

7 MR. GOLDBERG: Yes, Your Honor, I do think you're on  
8 to something and why don't we talk with plaintiffs about  
9 whether there's specific language that addresses it that we  
10 can come up with, that addresses that point.

11 JUDGE SCHNEIDER: Right. Okay. And while we're on  
12 that subject, I did think there should be a caveat that if  
13 there's good cause, you can make an application to redepose a  
14 witness about a specific subject area, but shouldn't there  
15 also be a caveat, that this doesn't go for either side, it  
16 goes for both sides, plaintiffs or defendants, that you have a  
17 right to apply for more than the seven hours or the  
18 seven-plus-50-percent hours to depose a witness.

19 There may be witnesses that it's expected you're  
20 going to take more than seven hours. I mean, I'm not picking  
21 on anybody, I'm not making a ruling.

22 In a few minutes, we're going to talk about the MSP  
23 issue and that might be someone that the plaintiffs reasonably  
24 believe they can't get done in seven hours. There may be a  
25 defense witness who has an incredible number of documents and

1 they're in a foreign language and maybe one-and-a-half days  
2 isn't enough, so shouldn't there be something in the protocol  
3 about a good cause showing that making an application to  
4 either redepone a witness or to extend the time to take a  
5 deposition.

6 If you can't agree. My experience has been good  
7 counsel agree on issues like that, but sometimes there's  
8 disputes.

9 MR. SLATER: Your Honor, it's Adam Slater. I think  
10 we may already have the language in there to that effect. If  
11 not, it makes sense. I do want to correct one thing, or just  
12 make one thing clearer for Your Honor. This is in the  
13 category of, we didn't agree to the protocol, and frankly, the  
14 defense knew it, because they put in the 50 percent additional  
15 time and that's the amount of extra time we asked for.

16 We had 75 percent and so just to flag that for Your  
17 Honor. I mean, I think we had 50 percent or 75 percent in  
18 Benicar, that was just Japanese translators who were sitting  
19 in the room with the witnesses.

20 JUDGE SCHNEIDER: We'll talk about that. I  
21 understand that's a gigantic problem. I have taken, when I  
22 was in practice, translated depositions and realized how  
23 incredibly cumbersome and difficult they are.

24 MR. SLATER: -- but you say we agree to as  
25 plaintiffs. We don't have a problem in concept of what you

1 said. It makes sense, and we should be able to work these  
2 things out.

3 JUDGE SCHNEIDER: Okay. So then let's go to the  
4 third issue, which is the individual capacity corporate reps.

5 Again, we'll let you talk about it further. I only  
6 make this comment. I'm not ruling. Whatever you agree to is  
7 fine with me.

8 My experience, though, has been the opposite of what  
9 I understand you're proposing. I think you're proposing that  
10 the witness be deposed in the corporate capacity first and  
11 then deal with the individual issues.

12 I don't know, my experience has been that the  
13 individual is deposed first and then the company designates  
14 which portion of that testimony, if not all of it, shall be  
15 30(b)(6) testimony. But if you want to do it the other way  
16 around, of course, I have no objection to it. It was just  
17 interesting that my experience is a little bit different than  
18 yours.

19 MR. GOLDBERG: Well, Your Honor, this is Seth  
20 Goldberg. I think, I think the main point of this is really  
21 that the depositions be conducted on -- either on the same day  
22 or consecutive days.

23 Whether you order it individual first, 30(b)(6)  
24 second, or 30(b)(6) first, individual second, I suppose that  
25 could be decided among counsel before the deposition, but, you

1 know, there are some witnesses who are going to be designated  
2 for the topics in the plaintiffs' 30(b) (6) notice, and what we  
3 don't want to do is have a situation where a witness is  
4 deposed on those topics on one day and weeks later is called  
5 back to be deposed on their individual -- in their individual  
6 capacity.

7 And so what we think makes sense is to start with the  
8 30(b) (6) topics, which are more discreet, and in some cases,  
9 you know, a witness may only have one or two topics.

10 You finish those topics and then you commence the  
11 seven-hour individual testimony, and, Your Honor, if it need  
12 be to slip into the next day, you finish the testimony, then  
13 you do that. But what we don't want to do is split these up  
14 by weeks and months, especially given the very challenging  
15 logistical issues.

16 JUDGE SCHNEIDER: It sounds to me like that's an  
17 issue you're going to work out.

18 I would assume that plaintiff has the same interest  
19 as you in doing the depositions efficiently and whatever order  
20 you agree to is fine with me, of course. If there's a  
21 dispute, we'll address it.

22 So long as plaintiff is given sufficient notice,  
23 which it sounds like they will about who's going to testify  
24 about what 30(b) (6) topic. I don't know, it seems pretty  
25 straightforward that you'll be able to work that out.

1                   MR. GOLDBERG: Your Honor, this is particularly  
2 important and I think there's been a little bit of confusion  
3 here. We understood that there would need to be additional  
4 meet and confer about the addendums, which were only provided  
5 to plaintiffs on Friday, but these macro issues have been the  
6 subject of back-and-forth meet and confers for more than a  
7 month, and these three particular issues did not need to be  
8 the subject of additional meet and confer, and on this  
9 particular issue, the -- and that's why we proposed the  
10 language we did, was so that we didn't have to have further  
11 negotiation on this issue, or on any of these three issues.

12                  The language seems to cover everything that we've  
13 discussed on all three of these issues and I haven't heard any  
14 disagreement about that language.

15                  But on this particular issue, we do want there to be  
16 some clarity that where there is an individual deponent, a  
17 witness who's deposed in their individual capacity and that  
18 witness is also designated to cover 30(b)(6) topics, that  
19 those -- that the depositions in those capacities be conducted  
20 on consecutive -- on the same day or on consecutive days to  
21 avoid the burdens that would come with having those  
22 depositions separated.

23                  MR. SLATER: Your Honor, Adam Slater. I'm not sure  
24 what Mr. Goldberg is concerned about or why he's concerned  
25 about what we're doing today. We told him on the phone when

1 we had our meet and confer that we agreed that if a witness  
2 was both a fact witness and a 30(b)(6) witness, that the  
3 deposition should happen all at once.

4 So I'm not sure why he has this concern, because we  
5 specifically agreed, and, in fact, I said to Mr. Goldberg, you  
6 know, in litigations I've been involved in where a witness was  
7 both a fact witness and was designated on important issues,  
8 the line between corporate and personal testimony or  
9 individual testimony is so blurred and interacted that -- I've  
10 had depositions where we just took the person as a corporate  
11 rep and just did everything under that umbrella because it's  
12 just seamless and you just do it all, you know, you just fold  
13 everything into one large deposition. And he said, well,  
14 that's an interesting idea, that could make a lot of sense,  
15 I'll get back to you.

16 And then we never heard back, because we tried to  
17 schedule a follow-up meet and confer to both talk about the  
18 prioritization of specific witnesses and the 30(b)(6)  
19 witnesses at once with our team and their team, and we were  
20 trying to schedule the call for yesterday and defense counsel  
21 couldn't do it yesterday, so they told us they would provide  
22 other dates to talk, either later this week, presumably later  
23 this week, so I just don't want Your Honor to think that we're  
24 in some unreasonable place where we're not agreeing to basic  
25 things we've already agreed to, and that this meet and confer

1 was done, because it wasn't. We were literally waiting for  
2 them to get back to us with answers to some of our questions  
3 and to schedule a further discussion.

4 So I don't think there's a lot of space here. If  
5 their concern is solely that a witness who's both a fact  
6 witness and a 30(b)(6) witness will be deposed either, you  
7 know, on consecutive days or whatever, or during one time  
8 period, we agree, that makes perfect sense. I won't be  
9 surprised if we find out that witnesses on the defense side  
10 turn out not to be available on consecutive days and we start  
11 hearing from the defense, we can give you a day on Tuesday and  
12 then another day next Monday.

13 So we're in agreement on that.

14 JUDGE SCHNEIDER: Mr. Goldberg, I think I understand  
15 your concern, it's legitimate. I think the way to handle this  
16 is to say, the drop-dead date for finalized general deposition  
17 protocol, maybe not the addendum, but the general deposition  
18 protocol is November 11th. Any issue not raised is waived and  
19 we'll get the deposition, general deposition protocol entered  
20 and finalized on November 11. And we'll see where we are with  
21 the addendum, which the Court recognizes raises a lot of  
22 sticky issues, but it's a legitimate concern that this is just  
23 going on and on and on.

24 So I thought it was going to be today, you know,  
25 we'll give the parties two more weeks to talk about this, and

1 whatever issues are not raised by November 11, well, they're  
2 waived and we'll just go with what we've got.

3 So I think that takes care of your concern. All  
4 right?

5 MR. GOLDBERG: Thank you.

6 JUDGE SCHNEIDER: But the harder issue -- I think  
7 we'll get to deposition protocol, it's pretty standard stuff.

8 The harder issue is obviously the addendums. Do I  
9 take it that, Mr. Slater, the parties are still talking about  
10 that, right?

11 MR. SLATER: We have not yet had a chance to confer  
12 with the defense. They sent us the addendums Friday night and  
13 as I said, we're scheduling our opportunities to talk, and  
14 you're right, there are a lot of issues there in that  
15 addendum.

16 JUDGE SCHNEIDER: So we'll defer that for now and see  
17 where we are on November 11 and maybe we'll get lucky and  
18 we'll be able to finalize that by November 22nd.

19 I guess just a general question I had is with regard  
20 to China and India, do the plaintiffs have to follow either  
21 The Hague procedure or the particular procedures, say, the  
22 Indian General Central Authority, and if so, does that impact  
23 deposition scheduling issues?

24 Mr. Goldberg and counsel for the Indian parties, can  
25 you address that?

1                   MR. GOLDBERG: Your Honor, I can address it for the  
2 Chinese nationals, and then I'll let counsel, my co-counsel  
3 address it for the Indian nationals.

4                   And I think we covered this or mentioned this before,  
5 but in order to take the deposition of a Chinese national who  
6 resides in Mainland China, the plaintiffs have to follow The  
7 Hague Convention and Chinese Civil Procedure and obtain a  
8 letter of request approved by the Ministry of Justice in  
9 China, and absent that, a deposition of a Chinese national who  
10 resides in Mainland China cannot be conducted in Mainland  
11 China without criminal penalties for those who participate in  
12 the deposition. And that includes video testimony, as well.

13                  So somebody who's at ZHP and lives near ZHP and they  
14 need to be deposed in this case, unless plaintiffs have gotten  
15 permission from the Chinese government to take that  
16 deposition, even by video, they can't do it. And plaintiffs  
17 have made no attempt to obtain that letter of request and get  
18 that approval, so, you know, we're left with, you know, a  
19 situation where we, ZHP, or any other Chinese national could  
20 insist that plaintiffs obtain that letter of request and that  
21 approval and not be deposed until that happened, and that  
22 would be the right of any of -- any Chinese national.

23                  As a practical matter, I think it's likely that some  
24 ZHP employees and perhaps other Chinese nationals, if they've  
25 been noticed or subpoenaed, I think plaintiffs have third --

1 Chinese nationals on their third-party witness list would  
2 agree to be deposed in this action, but such agreement would  
3 require the Chinese national to actually travel out of China  
4 for the deposition, and that's, you know, we've set forth some  
5 of those issues or restrictions in our deposition addendum  
6 because we want the Court to be well-aware of this unique  
7 circumstance.

8 We have suggested that a Chinese national would be  
9 deposed in Hong Kong. Because of all of the countries in the  
10 world, Hong Kong has the easiest, is the most permissive with  
11 respect to entry of Chinese nationals from Mainland China.

12 So if a witness -- if a Chinese national agrees to be  
13 deposed in this case, they would agree to be deposed in Hong  
14 Kong, which if it's a ZHP employee would still require ten  
15 hours of travel. And if it's by video, they would be  
16 traveling ten hours to be deposed by video.

17 So obviously, you know, to take a voluntary  
18 deposition in this case is demonstrating a real commitment by  
19 the witness, and absent that, plaintiff can -- they certainly  
20 are permitted, they haven't made any attempt and, in fact,  
21 have outright refused to make an attempt to obtain a letter of  
22 request to depose a witness in China.

23 I'll let my colleague speak about whether a  
24 deposition has to be done -- how a deposition would have to be  
25 done with respect to India.

1                   MR. SLATER: Your Honor, it's Adam Slater. Do you  
2 want me to address that at all or wait? I'll do whatever you  
3 want.

4                   JUDGE SCHNEIDER: Yeah, why don't you just address  
5 the Chinese dep first.

6                   MR. SLATER: Okay. ZHP needs to realize that they  
7 are a defendant in a United States federal litigation, and  
8 they're fully within the jurisdiction of this Court, and I  
9 think the sooner they realize that, the better.

10                  For Counsel to say, we haven't started the letter of  
11 request process, where they've told us that we would then have  
12 to take the depositions -- if we could get into China, under  
13 very circumscribed circumstances, with state secrets and  
14 police officers standing over our shoulders or whatever other  
15 things happen in China, I don't know, it's been presented as  
16 this very, very difficult process, and I still don't  
17 understand, frankly, what state secrets apply to this case, or  
18 how it could, and if they're actually going to make such  
19 objections in the depositions, in which case, we probably  
20 should litigate that issue so we don't have a lot of  
21 disruption in the depositions, but we're not going to China to  
22 depose these witnesses.

23                  Our position is this, Your Honor, and this is what I  
24 was saying before about trying to work cooperatively to  
25 identify the best witnesses to be 30(b) (6) witnesses to bring

1 to the United States or maybe they're already here, like John  
2 Du who lives in the United States, or they could be done in  
3 closer countries where there can be more convenience and  
4 efficiency.

5 That's the problem, because we're hearing this from  
6 the defense where they're essentially threatening us and  
7 saying, well, our witnesses who work for a defendant that is  
8 under the jurisdiction of this Court and the Federal Rules of  
9 Civil Procedure may not agree to be, deposed, and our position  
10 on that is, then you're going to be in default of your  
11 discovery obligations and we'll ask for a liability judgment,  
12 because we're not going to go to China where we can't get in  
13 anyway.

14 So what Your Honor just heard crystallizes a level of  
15 why we have a level of frustration in dealing with ZHP. They  
16 seem to have this sense of entitlement that they can or can't  
17 do what they want when they're before this Court and under the  
18 jurisdiction of the Court.

19 We've done research. There's a lot of law that says  
20 that we should be able to compel their corporate  
21 representatives to be deposed in the District of New Jersey.  
22 Now, if there are issues with certain witnesses not being able  
23 to get here from China, then they can designate other people,  
24 or find a way to accommodate this.

25 We are certainly willing to work with them on the

1 logistics if the witnesses have to be deposed by video from  
2 another part of the world.

3           But, for example, I don't think it's feasible to  
4 start those depositions at 9:00 p.m. and understand that we  
5 have to complete them by six -- five or six o'clock in the  
6 morning.

7           I mean, it sounds good to work with each other in the  
8 time zones, but we also have to address practical reality.

9           Again, this -- what you just heard from the defense  
10 for ZHP is singular to ZHP at this point. We haven't heard  
11 that kind of push-back from other defendants from any other  
12 countries where they've been so -- I'm going to use the word  
13 "obstructive" in the sense of trying to work through these  
14 issues.

15           Now, we're hopeful that the meet-and-confer process  
16 which is now ongoing with the 30(b) (6) individual witnesses  
17 will bear fruit, but you've just heard what we're facing in  
18 these calls. So that's -- that's in the short version, our  
19 position on where we are and maybe pre-stages some of the  
20 issues the Court may have to rule on, and we're going to ask  
21 for orders that are going to ultimately, if this is their  
22 position, going to compel witnesses to go where the Court  
23 tells them to go because they're under the jurisdiction of  
24 this Court. They sold these products in the United States,  
25 taking advantage of United States laws to make a lot of money,

1 and now they're being called before the Court and need to  
2 cooperate.

3 JUDGE SCHNEIDER: So, Mr. Slater, does it look like  
4 the Court is going to have to decide the issue, of course,  
5 after submission of briefs, as to where the depositions of the  
6 Chinese nationals are going to be taken?

7 MR. SLATER: If the answer is, if their position is  
8 really that we have to find a way to depose these people in  
9 China, then there's -- then obviously, that's unworkable and  
10 isn't going to happen, and there would be an issue to decide.

11 If that's just something they're throwing up for a  
12 negotiating position, then it's probably not an issue at this  
13 point, but we have to then determine if we can work out an  
14 outside China location for some of the witnesses.

15 So I don't know. It's going to ultimately depend on  
16 where they draw the line and how cooperative they are on  
17 working with us to name corporate representatives who can  
18 cover as much of the key testimony as possible in an efficient  
19 and a convenient location as possible -- yeah, if they can do  
20 that, then I don't see why there should be any reason for the  
21 Court to be involved in that, but, that's under the control of  
22 the defense in terms of what line they want to draw in the  
23 sand.

24 JUDGE SCHNEIDER: Question for you, though, question:  
25 I'm not sure we know the answer now, but hypothetically, this

1 is purely hypothetically, suppose these depositions because of  
2 the COVID situation have to be taken by video, does it make a  
3 difference if the witness is in Hong Kong or Los Angeles, if  
4 it's only --

5 MR. SLATER: I apologize, Judge, I didn't -- the  
6 answer to the question is, the only -- the only thing that  
7 matters if that's the case, and we expect all the depositions  
8 to be taken by video. The only issue is going to be the time  
9 zone and the scheduling and whether or not these depositions  
10 happen in seven, or eight, or nine-hour chunks, or we break  
11 them up, because people cannot stay up until five in the  
12 morning taking depositions.

13 JUDGE SCHNEIDER: We'll deal with that issue. I  
14 think that's a legitimate issue, but we can deal with that.  
15 But it almost seems like if there's an acknowledgement that  
16 these depositions have to be -- are going to be taken by video  
17 and it's illegal to take a video deposition in China, and if,  
18 capital I, capital F, the witnesses are willing to go to Hong  
19 Kong to have a video deposition, there doesn't seem to be a  
20 dispute then about that, ultimately we'll have to address the  
21 length of the deposition, the time it's going to start and  
22 end, so that we may be talking about a moot issue, because if  
23 it's video, then it doesn't matter where the witness is,  
24 right?

25 MR. SLATER: I think that's generally correct. I

1 think there's still the caveat of -- we think that with the  
2 corporate representative depositions, that there's authority  
3 to have those happen in the District of New Jersey.

4 JUDGE SCHNEIDER: Okay.

5 MR. SLATER: And we're hoping that -- because the  
6 defense wants to work with us on certain things, on how many  
7 witnesses we depose, we're hopeful that that's going to be  
8 something that they will work with us on.

9 THE COURT: Okay. Fair enough, fair enough. So I  
10 think what we're -- ultimately, where we are is that not  
11 unexpectedly, this is an issue that still has to be hashed out  
12 because of the acknowledged logistical problems that come with  
13 the Chinese witnesses.

14 So we'll let you and Mr. Goldberg talk it out.

15 Let's talk about India. I'm not sure who's going to  
16 talk about the Indian depositions.

17 MR. TRISCHLER: Your Honor, this is Clem Trischler.  
18 I don't want to step on anyone's toes, so if there's anyone  
19 else on our side that wants to speak about it, I'm certainly  
20 happy to defer, and if the Court wants to get into some of the  
21 specifics of the interplay of the Federal Rules of Civil  
22 Procedure and The Hague Convention as it applies to India, my  
23 colleague, Frank Stooli is on the line and I may defer to  
24 Frank for some of the -- any specific questions that the Court  
25 may have, but just to address a few things, if I may.

1           I think, as it relates to India, you know, I think  
2 some of this discussion may be a bit premature because in  
3 fairness, and as Mr. Slater said, we could reasonably submit  
4 in the addendum to them. We haven't really had a chance to  
5 hash it out, so I don't think anyone can really say how much  
6 is in dispute, if any, and what we can work out and what we  
7 cannot work out.

8           So I'm optimistic that many of these issues will be  
9 capable of being resolved.

10          I think that India does follow, but I can't tell you,  
11 though, is I think India does follow The Hague Evidence  
12 Convention. And that in the case of individuals who are  
13 citizens of the nation of India, who are not 30(b) (6)  
14 representatives, who are not parties to this litigation but  
15 individual employees who reside in India, international law  
16 would require that there be -- that those requirements be  
17 followed and that would involve similar to what Mr. Goldberg  
18 issued, a request being sent to an authority in India and  
19 permission to take the deposition.

20          Granted, now, I think one of the things that we  
21 consistently talked about, and I don't -- you know, we're not  
22 raising international law as a hurdle or an obstacle or an  
23 impediment to discovery, it's just a reality.

24          But I think what we've talked about when we've had  
25 discussions with the plaintiffs' side is that we do think the

1 30(b)(6) depositions should come first as it relates to  
2 manufacturers based in India.

3           We are not taking the position that 30(b)(6)  
4 depositions cannot be taken. You know, frankly, in the case  
5 of my client, I'm hoping that many of the 30(b)(6) designees  
6 that we made will be -- designations that we made will be U.S.  
7 based, so that we can try and do those depositions and that  
8 sort of discovery first.

9           But once we get past the 30(b)(6) stage, if plaintiff  
10 believes there are Indian nationals that they still want to  
11 dispose, we are going to have to face the issue of foreign law  
12 and the reality that those are citizens of another nation,  
13 they're not parties, they're not subject to the jurisdiction  
14 of this Court, and that those depositions have to be taken  
15 either by agreement, and if not by agreement, then pursuant to  
16 the foreign laws.

17           JUDGE SCHNEIDER: Well, here's the question -- you  
18 know, to be more practical, I want to make sure I understand  
19 what you're saying.

20           Now, when I read Mr. Goldberg's letter and I could be  
21 wrong, I read Mr. Goldberg's letter to indicate that, you  
22 know, if these witnesses -- if their witness -- if the Chinese  
23 witness -- whoever is typing, can you put your phone on mute,  
24 please? That would be very helpful.

25           So with regard to ZHP, I understood the situation to

1 be if the witnesses go to Hong Kong, there may be issues about  
2 having someone who has to fit in, but we don't have to worry  
3 about The Hague or any other issues.

4           But what I read, the portion of the letter regarding  
5 India, I got the impression that the Indian entities are going  
6 to insist upon compliance with some provisions required by The  
7 Hague Evidence Convention or this Indian Central Authority.

8           Is that the case, and is that the same case if,  
9 suppose, the Indian witness goes to another country, can we  
10 avoid those complications and inevitable delay.

11           MR. TRISCHLER: As to the last question first, Your  
12 Honor, if the witness were to appear voluntarily in, you know,  
13 in another country, then certainly the deposition can be  
14 taken. That's, you know, that's simply discovery by agreement  
15 at that point. And there are no foreign laws that are being  
16 implicated.

17           What -- I think what we were -- what we were  
18 attempting to do in the draft of the addendum, on behalf of  
19 all of the Indian manufacturers, was simply to preserve, to  
20 advise the Court and to preserve the objection to serial  
21 requests for individuals, depositions of foreign nationals  
22 that we don't think is proper.

23           You know, on behalf of my client, I'm not drawing any  
24 line in the sand at this point saying that Mylan  
25 Pharmaceuticals is not going to, you know, is unwilling to

1 produce any Indian witnesses for deposition in, you know,  
2 wherever the witness appears.

3 I'm certainly willing to work with the plaintiff on  
4 that.

5 All I'm saying is that at some point in time, there  
6 may be a point where we need to say, you know, we can't do it,  
7 we can't do any more. I think -- that's why I said, I started  
8 my comments by saying I think some of this is premature,  
9 because I'd like to have some time to continue to talk to the  
10 plaintiff about how we can do this and what we can work  
11 through.

12 JUDGE SCHNEIDER: Okay.

13 MR. TRISCHLER: But these issues are there and they  
14 are real.

15 JUDGE SCHNEIDER: Okay. I think that's fair enough  
16 and you should have an opportunity --

17 MS. LOCKARD: Your Honor, if I may, I want to make  
18 sure I preserve this as well. Victoria Lockard, the Teva  
19 defendants.

20 We, on behalf of Teva, we've had an initial meet and  
21 confer with the plaintiff on this and we do have a number of  
22 witnesses who are based in Israel and Europe, but I think Mr.  
23 Trischler has, you know, stated the position that Teva is also  
24 in, which is that, you know, we're continuing to evaluate  
25 this. We have a number of witnesses in the U.S. We can start

1 there, and, you know, we don't intend to, you know, blockade  
2 discovery either, but we do think that there are going to be  
3 some basic procedural requirements that it should not, should  
4 not be too difficult to accomplish.

5           But I wanted to make sure I was heard on that for  
6 Teva.

7           JUDGE SCHNEIDER: Fair enough. But I think the  
8 bottom line is that obviously, discussions have to further  
9 advance between the parties, one, about who's going to be  
10 deposed and where, again, if we're going to do this -- if  
11 you're going to do the depositions by video, and it's illegal  
12 -- or it's not illegal in India, but if you do a deposition in  
13 India, you have to go through the gymnastics of The Hague  
14 Convention.

15           Hopefully, the witness and the parties will agree,  
16 you know, the witness could fly to another country, take the  
17 video deposition there, and you could work it out. But again,  
18 the bottom line is, it's just a subject of further discussion  
19 between the plaintiffs and defendants about the mechanics and  
20 logistics of getting this done.

21           It doesn't sound insurmountable, but unquestionably,  
22 incredibly difficult. So hopefully, the parties will continue  
23 to talk.

24           We'll get the general deposition protocol finalized  
25 November 11, see where we are with the addendums on

1 November 11, and maybe on that date, we can set a final date  
2 for the submission of the addendums, with the recognition that  
3 they create more complications and difficulties than a general  
4 deposition protocol.

5 But where there's a will, there's a way, and  
6 especially since the depositions are likely to be taken by  
7 video, there should be a way to get this done.

8 Of course, the issues about when the depositions are  
9 going to start, exhibits, the interpreters, how long the  
10 depositions are, they have to be worked out. But again, like  
11 I said, where there's a will, there's a way.

12 So we'll -- you know, I appreciate the input of the  
13 defendants, it's very helpful to get this discussion started.  
14 And going back to my original point, Mr. Slater, whoever is  
15 going to take the lead for these depositions for your group, I  
16 don't know if there's going to be a person or a group who does  
17 Teva, a person in your group who's going to do Mylan, they  
18 ought to be the ones who talk directly to these parties to try  
19 and work out these issues.

20 Okay. So I think we sort of finished the discussion  
21 of the deposition protocol. We know what we're going to do  
22 with that. We have agreed to put off the Rule 34 document  
23 requests with the final date of November 11th to get those  
24 resolved.

25 The next issue I see on the agenda is the

1 coordination of the state cases.

2 I mean, could there be -- there obviously can't be  
3 any disagreement that there should be as much coordination as  
4 possible between the state and federal cases. Anything the  
5 Court can do to help in that regard, we'll do. It just makes  
6 perfect sense.

7 Any ideas about what we could or should be doing, and  
8 is the thing to do to talk to the plaintiffs' attorneys in  
9 those cases and to get them on board? Because we don't have  
10 any jurisdiction over the state cases.

11 MR. SLATER: Your Honor, Adam Slater. Yes, we would  
12 like to. We've reached out without tremendous success on one  
13 of the litigations, but what we need, and I expressed this to  
14 Mr. Goldberg last week, is we need them to get us fully up to  
15 date on what's happening in these litigations.

16 We just found out that there were motions to dismiss  
17 filed in some other cases.

18 A VOICE: Nicole speaking. Hello?

19 MR. SLATER: It's Adam Slater.

20 JUDGE SCHNEIDER: Who is this talking? Well, that  
21 might have been someone who is talking on another phone call,  
22 Mr. Slater, so just continue.

23 MR. SLATER: Got it.

24 It would be -- we need the defense to immediately,  
25 when they find out about another case somewhere else to notify

1 us, let us know the status. I mean, I just looked at their  
2 chart and saw that motions to dismiss have been filed in some  
3 of those cases. I don't know what the issues are that they've  
4 moved on. I don't know, you know, if this is something where  
5 you're going to suddenly start receiving decisions from  
6 another Court where we weren't even on notice to even talk to  
7 the plaintiffs and perhaps find out if we can coordinate with  
8 their briefing or find out what's happening, et cetera, et  
9 cetera.

10 So we need to be on notice of all the cases and who  
11 the lawyers are so we can reach out to them and then, of  
12 course, we will and do whatever we can to try to work towards  
13 coordination, you know, understanding we don't have complete  
14 control either, if they're not part of -- certainly not part  
15 of our team.

16 But we're at a little bit of a loss on, I think, some  
17 of these cases because we don't know about them.

18 MR. GOLDBERG: Your Honor, this is Seth Goldberg.

19 JUDGE SCHNEIDER: Yes, go ahead.

20 MR. GOLDBERG: This is Seth Goldberg. I was going to  
21 say, I think we -- there are a number of different state court  
22 cases obviously, we've put them in our submission and I think  
23 we obviously have an interest in trying to have these  
24 coordinated. We certainly will do our best to alert  
25 plaintiffs' counsel to them. In the past, we tried to do

1 that. It's not -- you know, plaintiffs, I think have an  
2 obligation if they're wanting to get notice from us to then do  
3 what they can in a responsive way to try to get these things  
4 resolved, and get these things coordinated.

5 So, you know, we certainly want to do that. The New  
6 Jersey cases have all been held in abeyance. There are some  
7 other jurisdictions out there that, you know, we need to try  
8 to get some coordination on, so that those cases, if they get  
9 beyond motions to dismiss, don't get ahead of the MDL.

10 JUDGE SCHNEIDER: Well, I think Mr. Slater's idea is  
11 a good one, to make sure that their group is updated on the  
12 status of those cases, and I don't know, you have more  
13 experience doing this than we do, but I would think that if  
14 the plaintiff group in this case talks to the plaintiffs in  
15 those cases, it seems logical that something should be worked  
16 out about coordination. It just makes absolutely zero sense  
17 for those cases not to be coordinated somehow with this MDL.

18 So hopefully, that will be worked out, and whatever  
19 this Court can do to foster coordination, just let us know.  
20 We can certainly reach out to the New Jersey judges, that's  
21 easy, and if we have to, we'll reach out to the state court  
22 judges in the other states as well.

23 But if you have any ideas about what we can do to  
24 help foster coordination, we are all for it.

25 But in the first instance, I think Mr. Slater's

1 plaintiffs' group ought to talk to the plaintiffs in these  
2 state cases and then if that doesn't work out and you think it  
3 would be helpful if myself or Judge Kugler contacts the judge  
4 in those other state cases, by golly we'll do it.

5 MR. GOLDBERG: Thank you, Judge.

6 JUDGE SCHNEIDER: I'm looking through the agenda. I  
7 don't see any issues, any other issues for this call. You  
8 tell me. Are there any other issues that we need to talk  
9 about?

10 Let me just summarize my notes about where we are,  
11 okay?

12 More than likely, all depositions are probably going  
13 to start in January. I'm not holding you to that, defendants,  
14 but it sounds like it's likely. The Rule 40 -- the Rule 34  
15 document request is deferred until November 11. I anticipate  
16 there's going to be issues with MSP.

17 My general reaction to that is certainly, plaintiffs  
18 -- I'm sorry, defendants are entitled to take class  
19 certification discovery. I don't know if it's true or not,  
20 but defendants have represented in their submission that MSP  
21 has only produced information for three of its 94 assignors.

22 You know, my gut reaction without ruling is that's  
23 insufficient. On the other hand, it seems impractical that  
24 defendants are going to get information on all 94.

25 I don't know the issues, we'll have to brief it, but

1 it just seems logical if you can break the assignors into  
2 different categories and maybe you can agree that defendant  
3 can get an appropriate sampling from each category, that would  
4 be sufficient for class certification purposes. But I assume  
5 that's an issue you're going to have to discuss and work out.

6           But there's no question that, you know, defendants  
7 are entitled to defend class cert. We've said it time and  
8 time again. The plaintiffs have to have skin in the game, and  
9 if it means they have to dig through their files to get  
10 information, so be it. It's a big case and defendants have  
11 the right to defend their interests. That's my general  
12 impression on the MSP issue, but I'm sure you're going to  
13 discuss that.

14           We set a final date, a drop-dead date of November 11  
15 to finalize the general deposition protocol. All issues not  
16 raised by that date are going to be waived, and then we'll  
17 revisit the status of the addendums for the foreign companies,  
18 but I think based on this discussion and the fact that there  
19 seems to be an acknowledgement that we're going to do the  
20 deposition -- you're going to do the depositions by video,  
21 that certainly helps and goes a long way towards making it a  
22 little bit easier to get these depositions done.

23           So that's my summary of what we discussed today.

24           Judge Kugler, as soon as we hang up, or I hang up,  
25 I'm going to alert him to what we talked and he's going to

1 join the call, but I wanted to -- oh, on the coordination of  
2 state cases, defendants are going to share with plaintiff the  
3 information they have and you'll let this Court know if  
4 there's anything we can do to help foster coordination, which  
5 -- no one can reasonably agree of like mind that the cases  
6 shouldn't be coordinated, they absolutely should be.

7 So are there any other issues to address on this  
8 call, Counsel, before we take a short break, and I'll get  
9 Judge Kugler on the line.

10 MR. SLATER: Your Honor, nothing for the plaintiffs.  
11 Do you want us to hold on and wait or --

12 JUDGE SCHNEIDER: Yeah, I actually think that would  
13 be best.

14 I don't think it's going to be long. He's in the  
15 office. I'm going to give him a call now. If you could hold  
16 on a few minutes and just wait, I'll go get him.

17 Mr. Goldberg, anything else for the defendants?

18 MR. GOLDBERG: Nothing for defendants, Your Honor.

19 JUDGE SCHNEIDER: Okay. And, oh, one thing I didn't  
20 mention is I know we have a briefing schedule for the issues  
21 that Teva raised. I'm going to do my darndest to decide that  
22 issue on November 11. We'll see what the briefs say.

23 The heat's off a little bit because we stayed the  
24 review of the, quote unquote, nonresponsive documents so the  
25 heat is off a little bit, so, if we don't get a decision on

1 November 11, you'll get a decision very, very close to that,  
2 and I think that issue is in hand.

3 MS. LOCKARD: Thanks, Judge.

4 JUDGE SCHNEIDER: Okay. I'm sorry, go ahead.

5 MS. SMITH: Excuse me, Judge, this is Loretta. Judge  
6 Kugler is in -- at the FSK so I'm told this afternoon, so let  
7 me e-mail him to get on the line.

8 JUDGE SCHNEIDER: I'm sorry, Loretta, what did you  
9 say, he's where?

10 MS. SMITH: He's at the court in Washington.

11 JUDGE SCHNEIDER: No, he's not. I'll take care of  
12 it, Loretta.

13 MS. SMITH okay.

14 JUDGE SCHNEIDER: His schedule changed. He's here  
15 today.

16 MS. SMITH: Okay. Thanks, Judge.

17 JUDGE SCHNEIDER: Just hold on, everybody, a few  
18 minutes, we'll be back. Just hold on.

19 (Pause.)

20 JUDGE SCHNEIDER: I just spoke to Judge Kugler and he  
21 should be joining the line at any moment.

22 JUDGE KUGLER: Good morning, it's Judge Kugler. How  
23 is everybody doing?

24 MR. SLATER: Well, Your Honor, how are you.

25 MS. LOCKARD: Good morning.

1                   JUDGE KUGLER: I am well, thank you. Is the court  
2 reporter on? Karen, are you on?

3                   THE COURT REPORTER: Yes, Judge, I'm here.

4                   JUDGE KUGLER: As I understand it, there's not a  
5 whole lot you need me to do today. We do have this issue on  
6 the orders to show cause.

7                   Issue 1. There are a number of people that defense  
8 counsel say still haven't sufficiently responded, but in the  
9 meantime, the Edwin Lewis case has been dismissed. We'll be  
10 dismissing Joseph Gioia, G-I-O-I-A; Karen Meade, M-E-A-D-E;  
11 and Paulette Bray, B-R-A-Y; and that leaves six.

12                  Is there anybody else that needs to be dismissed or  
13 are we going to move to dismiss on these six?

14                  MR. PAREKH: Good morning, Your Honor, this is Behram  
15 Parekh. We submitted and defendants submitted as to Karen  
16 Meade, that she should not be on the OSC list the last time  
17 and she should not be dismissed this time.

18                  JUDGE KUGLER: Well, it's in the letter I got from  
19 Mr. Goldberg. She's on the list of things that you're no  
20 longer seeking a dismissal of, correct?

21                  MR. HARKINS: Your Honor, this is Steven Harkins from  
22 Greenberg Traurig for the Teva defendants and the joint  
23 defense group. That's correct with respect to Ms. Meade. As  
24 we indicated in our letter, we are no longer seeking an order  
25 to show cause as to that case, and the same goes for the Gioia

1 and Bray cases, as you stated.

2 JUDGE KUGLER: Okay. That leaves six more that are  
3 still being carried. Judy Griffit, G-R-I-F-F-I-T; Susan  
4 Mefford, M-E-F-F-O-R-D; Margaret Gehefer, G-E-H-E-F-E-R;  
5 Virginia Bowden, B-O-W-D-E-N; Linda Frain, F-R-A-I-N; and  
6 Linda Lewis, L-E-W-I-S.

7 Any objections to dismissal of those six?

8 MR. HARKINS: No. Once again, this is Steve Harkins  
9 for the defense. With respect to these cases, we have several  
10 updates since our position statement was filed on Monday.

11 The Judy Griffit and Susan Mefford cases have been  
12 dismissed by stipulation, so we no longer need to request  
13 dismissal as to those.

14 The parties have also had further discussions with  
15 regard to the Linda Lewis case, and we can remove that case  
16 from the request to show cause at this time.

17 JUDGE KUGLER: Okay. Linda Lewis, that order to show  
18 cause will be dismissed. Judy Griffit, you're no longer  
19 seeking dismissal of that, because that's been dismissed,  
20 correct?

21 MR. HARKINS: Yes, Your Honor, that's correct.

22 JUDGE KUGLER: And what was the other one that  
23 there's a dismissal filed?

24 MR. HARKINS: Susan Mefford, M-E-F-F-O-R-D.

25 JUDGE KUGLER: Okay. All right. The others, then

1 that would be Margaret Gehefer, Virginia Bowden and Linda  
2 FRAIN will be dismissed. All right.

3 Now, there's also a number of second listings that  
4 you seek to shift to an order to show cause. Any updates on  
5 those?

6 MR. HARKINS: Your Honor, we've received no  
7 additional updates with respect to the cases, the eight cases  
8 listed for the second listing. So at this time, we are  
9 requesting orders to show cause returnable at the November  
10 case management conference as to all eight of these cases.

11 JUDGE KUGLER: All right. These will be Dorothy  
12 Battle, B-A-T-T-L-E; Donald Stewart, S-T-E-W-A-R-T; Louis  
13 Fisher, F-I-S-H-E-R; Louis Weiner, W-E-I-N-E-R; Theodore  
14 Keller, K-E-L-L-E-R; Alcuf, A-L-C-U-F, Gunter, G-U-N-T-E-R;  
15 James Huey, H-U-E-Y; and Paulette Bray, B-R-A-Y. Orders to  
16 show cause will issue as to those returnable at the November  
17 conference as to why they shouldn't be dismissed.

18 And then there's a -- starting at Page 25 of the  
19 defense letter, there are a list of -- let me get to the end  
20 of this -- 22 names that you seek for second listing; is that  
21 correct?

22 MR. HARKINS: Your Honor, the cases that are listed  
23 on the remainder of the defendants' position statement are  
24 being listed for the first time, so we are not requesting  
25 orders to show cause as to any of them. If there's anything

1 that plaintiffs' counsel would like to update us on, we are  
2 happy to hear that, but otherwise, we think we can continue to  
3 meet and confer with plaintiff's counsel ahead of next month's  
4 case management conference.

5 MS. GOLDENBERG: Sorry, Your Honor, this is Marlene  
6 Goldenberg for the plaintiffs. We had a lengthy meet and  
7 confer last weekend. I don't believe that there are any  
8 updates beyond what has come in the late evening hours of this  
9 week, that the defendants are already aware of. I just wanted  
10 to note for the Court that a number of these deficiencies  
11 likely will be cured by the next conference as a lot of these  
12 plaintiffs' counsel are just waiting for records to come in  
13 from their clients.

14 JUDGE KUGLER: Okay. They will be carried, then,  
15 until the next conference and you can advise us at the next  
16 conference which, if any of these, need to move to an order to  
17 show cause.

18 Now, an issue was raised about all the other pending  
19 litigation, federal, state. Is there anything that this Court  
20 needs to do about any of that?

21 MR. GOLDBERG: Your Honor, this is Seth Goldberg for  
22 the defendants. Not at this time. We'll confer with  
23 plaintiffs and, hopefully, plaintiffs will be able to make  
24 some progress with the plaintiffs' counsel for those cases,  
25 and if there's a way the Court can help, we'll certainly let

1 you know.

2 JUDGE KUGLER: Okay. And then, Mr. Goldberg, at the  
3 end of your letter, you asked about, you've requested oral  
4 argument on the pending motions to dismiss, correct?

5 MR. GOLDBERG: Correct, Your Honor.

6 JUDGE KUGLER: I'm not in a position today to tell  
7 you whether we're going to have oral argument or not on those  
8 cases. I generally have it only if I have questions, and I  
9 haven't had enough time to really get into your motions to  
10 know whether I had questions, but we will be advising you soon  
11 if there will be oral argument.

12 The impediment that we have about oral argument in  
13 the courthouse is, New Jersey now has 41 states on its  
14 quarantine list, so if you're coming from out of state to New  
15 Jersey, you might be facing that problem. So I can't ask  
16 anybody to come from out of state into New Jersey, they would  
17 be facing that issue.

18 We're also severely limited in courtroom  
19 availability. We're not really doing any civil matters.  
20 We've partially reopened for criminal matters, and even then,  
21 the -- there are severe restrictions on the number of people  
22 who can be in the courtroom and it's about 12 or 14 people is  
23 all we can fit in a courtroom, because of social distancing  
24 requirements.

25 But I will advise you in the not too distant future

1 as to whether and when we would have oral argument on any of  
2 the pending motions.

3 All right. Anything else that I need to decide today  
4 from either side?

5 MR. SLATER: Nothing from plaintiffs, Your Honor.

6 JUDGE KUGLER: Okay. How about defense counsel?

7 Anything else you need -- you want to talk about? I know you  
8 had a long and fruitful discussion with Judge Schneider today.

9 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I  
10 -- we don't have anything for Your Honor to decide. I know  
11 that at the end of the month, we're going to be talking with  
12 Your Honor about the scheduling of depositions of plaintiffs  
13 in personal injury cases, and is scheduled for general  
14 causation.

15 I just wanted, before we got off, to see if any of my  
16 defense colleagues wanted to discuss that with Your Honor.

17 MS. LOCKARD: Your Honor, it's Victoria Lockard for  
18 the Teva defendants. I just -- just to update you on where  
19 that stands, we do intend to submit to Your Honor a proposed  
20 schedule. That would incorporate those elements for the issue  
21 of causation as well as personal injury plaintiff depositions,  
22 and I believe at the last conference, Your Honor indicated you  
23 intended to enter such a schedule in November.

24 So our intent is to send the proposal over to  
25 plaintiffs this week and to do our best to meet and confer on

1 it, and hope to be in a position to submit something that is,  
2 if not fully agreed, then close to being agreed before the  
3 next conference.

4 JUDGE KUGLER: That's great. I look forward to  
5 seeing what you propose and we'll discuss it at the November  
6 conference, okay?

7 MS. LOCKARD: Excellent. Thank you, Judge.

8 JUDGE KUGLER: Anything else from anybody, plaintiffs  
9 or defense?

10 MR. GOLDBERG: Nothing from defendants, Your Honor.

11 JUDGE KUGLER: All right. I'd like to speak with  
12 Mr. Slater and Mr. Goldberg privately.

13 Is there -- is there a call-in number we can use for  
14 just us?

15 MR. SLATER: Your Honor, this is Seth Goldberg. I  
16 can send an e-mail with a number.

17 JUDGE KUGLER: Okay. That's great.

18 MR. SLATER: I'll send that to you and Mr. Goldberg.

19 (11:55 a.m.)

20 -----

21 I certify that the foregoing is a correct transcript  
22 from the record of proceedings in the above-entitled matter.

23 /S/ Karen Friedlander, CRR, RMR  
Court Reporter/Transcriber

24

25 October 30, 2020  
Date

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